

DOCKET FILE COPY ORIGINAL

Real Country For New England

WWT-AM 1320

RECEIVED

NOV - 4 1997

FCC MAIL ROOM



October 28, 1997

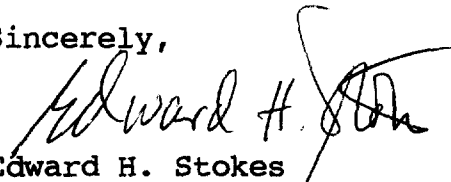
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Dear Secretary:

Enclosed please find the formal comments of Edward H. Stokes in the matter of MM Docket No. 97-182. I have included an original and nine copies so that each member of the commission can have a personal copy.

Thank you very much.

Sincerely,


Edward H. Stokes
President

No. of Copies rec'd
List ABCDE

019

DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION

Washington, DC 20554

RECEIVED

NOV - 4 1997

FCC MAIL ROOM

In the Matter of

Preemption of State and Local Zoning and) MM Docket No. 97-182
Land Use Restrictions on the Siting,)
Placement and Construction of Broadcast)
Station Transmission Facilities)

COMMENTS OF EDWARD H. STOKES

Edward H. Stokes is the President of Stokes Communications Corporation (SCC). SCC operates WCVR-FM and WWWT-AM in Randolph, Vermont. Before acquiring WWWT in 1980, Stokes was the Executive Director of the California Public Broadcasting Commission, an agency of California state government, from 1976 through 1980. Prior to that Stokes was the chief policy specialist on broadcast and telecommunications issues for the California Assembly Office of Research. Stokes is also a licensed amateur radio operator, having received his first license in 1959.

We strongly encourage the Commission to adopt the proposed rule. We do so based on the experience of several broadcasters here in Vermont, including SCC. State and local

officials have fomented a wave of hysteria in this state over tower construction.

We think preemption is required at this point because it has become clear that the State of Vermont has adopted a policy of intentionally interfering with the mandate of the FCC to regulate the nation's telecommunications industry.

Vermont's state land use planning agency, the Environmental Board (EB), believes that every aspect of the FCC's work is subject to review by the state. Michael Zahner, the EB's chief administrative officer, testified before the Vermont Senate Environmental Committee in January 1996 that the board had the right and responsibility to review any applicant's entire FCC licensing process to assure itself that the applicant was complying with state and federal law. This review is to be carried out by local citizen's panels who generally have little understanding or interest in the finer points of broadcast law and regulation.

SCC was granted a construction permit by the FCC in early summer 1992 to upgrade from class A to C3. The upgrade was to be accomplished by increasing tower height from 120' to 300' and by using a higher gain antenna array. We were advised by our local planning authorities that we needed a state EB permit to replace the existing tower. What resulted was five years of legal wrangling which has still not come to a conclusion. The primary issues were (1) that the tower and especially its lights were an eyesore and (2) that neighbors might suffer interference, and (3) that the neighbors' health

would be adversely effected. Ultimately, the board ordered us to install shields on the tower lights, without prior approval from the FAA or the FCC, at a cost of about \$50,000. The chairman of the EB told our attorney that the EB was very worried about towers and wanted to set an example using our case.

Our experience, within the Vermont context, is representative. Several other facilities which have been permitted by the FCC are unbuilt or under threat. A station permitted for Walpole, NH with transmission facilities in Vermont, has been repeatedly denied a Vermont EB permit to construct the required tower. Early decisions in this case make it abundantly clear that the reason for denial is the fact that the community of license is in a neighboring state. Another station permitted by the FCC for Brandon, Vermont is likewise being kept off the air; in this case the local planning official has been quoted to the effect that nobody is ever going to build a tower in his district as long as he has anything to say about it! Still another case involves station WIZN-FM in the Burlington area. Here the EB is seeking to take a station off the air on the basis of complaints by people who built their home right next to the preexisting broadcast tower and who are now dismayed that they are suffering poor reception of public radio's more distant signal.

We would like to see the FCC preempt local tower regulations for all FCC regulated services. Most towers

support multiple services, and the effectiveness of preemption will be impaired unless all are covered.

The Commission should preempt state and local restrictions regarding exposure to RF emissions from broadcast transmission facilities because local agencies generally lack the competence necessary to assess it. Federal regulation should also preempt local regulation intended for aesthetic purposes because aesthetics are a subjective quagmire. FAA mandated painting and lighting must be exempted from local review because simultaneous local regulation puts the broadcaster in the middle of a fight between the local agency and the federal government.

The Commission must provide a swift and certain mechanism whereby broadcasters can obtain appropriate relief from improper interference by state and local officials. Local citizen's boards operating without legal counsel, and balky state officials opposed to towers cannot be expected to obey any preemption rule unless the FCC provides licensees with appropriate enforcement procedures.

We approve of the procedural framework proposed by Petitioners. It gives state and local officials an adequate opportunity to participate in siting decisions while assuring broadcasters of a fair hearing in front of competent decision makers in cases of legitimate controversy.